

63
cont.
Amend 2

construction beam, wherein a Poisson's ratio of the tubular housing is less than the solid material to thereby confine the solid material.

Please add new claim 22 as follows:

A2

22. (New) A method of forming a construction beam comprising:

- securing at least one reinforcing rod in a tubular housing;
- placing the at least one reinforcing rod under tension; and
- filling the tubular housing with a solid material such that the solid material surrounds the at least one reinforcing rod, the tubular housing forming a part of the construction beam.

REMARKS

Claims 1-22 are present in this application. By this Amendment, claim 17 has been amended, and claim 22 has been added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 1-13 and 21 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,761,875 to Oliphant et al. in view of U.S. Patent No. 5,960,597 to Schwager and U.S. Patent No. 3,086,273 to Welborn. This rejection is respectfully traversed.

At the outset, it is well settled that the Patent Office bears the burden of establishing a *prima facie* case of obviousness. See, for example, *In re Deuel*, 34 USPQ2d 1210 (Fed. Cir. 1995). The legal determination under §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. The foundational facts for the *prima facie* case of obviousness are (1) the scope and content of the prior art; (2) the difference between the